No. 02-1855

Supreme Court, U.S.
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In The
Supreme Court of the United States

PATRICIA KINSEY,

Petitioner,

v.

THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The Florida Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THE FLORIDA SUPREME COURT PROPERLY DETERMINED THAT PETITIONER'S JUDICIAL CAMPAIGN SPEECH WAS NOT PROTECTED BY THE FIRST AMENDMENT WHERE SHE MADE INTENTIONAL MISREPRESENTATIONS CONCERNING HER OPPONENT AND WHERE SHE IMPLICITLY AND EXPLICITLY PLEDGED OR PROMISED THAT, IF ELECTED TO OFFICE, SHE WOULD BE BIASED IN FAVOR OF SPECIFIC PARTIES.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 4

ARGUMENT 6

I. PETITIONER FAILS TO DEMONSTRATE THAT THE MATERIAL PORTIONS OF FLORIDA'S CANON 7 ARE IMPLICATED BY THE WHITE DECISION 7

A. Judicial Canons Proscribing Candidates' "Pledges Or Promises" Are Entitled To Less Constitutional Protection Under *White* 7

B. The Florida Supreme Court's Rejection Of Petitioner's Justification For Her "Pledges Or Promises" Is Entirely Consistent With *White* 10

C. The Florida Supreme Court Properly Found That Petitioner's Intentional Misrepresentations Are Not Constitutionally Protected 18

CONCLUSION 25

TABLE OF AUTHORITIES

Page

CASES

Brown v. Hartlage, 456 U.S. 46 (1982) 18

In the Matter of Watson, 2003 WL 21321435 (Ct. App. N.Y. June 10, 2003) 16, 17

Inquiry Concerning A Judge (Kinsey), 842 So. 2d 77 (Fla. 2003) ..... *passim*

Pierce v. Capital Cities Communications, Inc., 576 F.2d 495 (3d Cir.), *cert. denied*, 439 U.S. 861 (1978) 18

Republican Party of Minnesota v. Kelly, 63 F. Supp. 2d 967 (D. Minn. 1999), *aff'd*, 247 F.3d 854 (8th Cir. 2001) 8

Republican Party of Minnesota. v. White, 536 U.S. 765 (2002) ..... *passim*

Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002) 21, 22, 24

Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986) 4

OTHER AUTHORITIES

Fla. Const., Art. V, § 12(a)(1) 1

Fla. Const., Art. V, § 12(b) 1

Florida Code of Judicial Conduct, Canon 7A(3) 11, 25

Florida Code of Judicial Conduct, Canon 7A(3)(a) 17

Florida Code of Judicial Conduct, Canon 7A(3)(d)(i) 10, 12

Florida Code of Judicial Conduct, Canon 7A(3)(d)(ii) 10, 12

TABLE OF AUTHORITIES – Continued

Page

Florida Code of Judicial Conduct, Canon 7A(3)(d)(iii) 18, 19, 22, 24, 25

Georgia Code of Judicial Conduct, Canon 7(B)(1)(d) 22

Minn. Code of Judicial Conduct, Canon 5(A)(3)(d)(i) (2002) 9

RULES

S. Ct. R. 10 5

TABLE OF APPENDICES

Page

APPENDIX A

Campaign Brochure – *Pat Kinsey: The Unanimous Choice Of Law Enforcement For County Judge*.....A1

APPENDIX B

Campaign Brochure – *If You Are A Criminal, You Probably Won't Want To Read This*.....A4

APPENDIX C

Campaign Brochure – *A Shocking Story Of Judicial Abuse*.....A7

APPENDIX D

Campaign Brochure – *A Vital Message From Law Enforcement*.....A10

STATEMENT OF THE CASE

BACKGROUND

The Florida Constitution confers upon the Florida Judicial Qualifications Commission ("JQC") the jurisdiction to investigate and make recommendations to the Florida Supreme Court regarding the discipline of judges. *See* Art. V, § 12(a)(1), *Fla. Const.* Pursuant to the state constitution, the JQC is divided into two separate panels, an investigative panel and a hearing panel. *See* Art. V, § 12(b). "The investigative panel is vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints and . . . submit formal charges to the hearing panel." *Id.* After receiving charges from the investigative panel, the hearing panel is authorized to conduct a trial on the charges and recommend appropriate discipline to the Florida Supreme Court.

Constitutionally authorized sanctions range from a public reprimand and fine to suspension or removal from office. Upon receipt of findings and a recommendation of discipline from the hearing panel, the Florida Supreme Court is authorized to accept, reject, or modify in whole or part the findings, conclusions, and recommendations of the hearing panel. It is from the Florida Supreme Court's opinion accepting in part the hearing panel's findings and recommendation of discipline in this case that the present Petition for Certiorari has its genesis.

FACTS

Petitioner, Judge Patricia Kinsey, was elected to the County Court bench in Escambia County, Florida in September, 1998, having defeated the incumbent County Court judge, William Green. On September 27, 1999, the

Investigative Panel of the JQC filed a Notice of Formal Charges against Petitioner. There were originally eleven formal charges brought against Petitioner. By Order dated March 2, 2000, the Hearing Panel granted the JQC leave to file an Amended Notice of Formal Charges ("Formal Charges") in which one additional charge was added. All of the charges stemmed from the JQC's contention that materials Petitioner disseminated during her 1998 judicial campaign violated various provisions of the Florida Code of Judicial Conduct.

The case was tried before the Hearing Panel on June 12-13, 2000. During proceedings before the Hearing Panel, Petitioner denied that any of her campaign materials violated the cited canons. She generally contended that her campaign literature was responsive to voters' needs to receive information concerning the candidates' job performance and philosophies. She further asserted that her campaign statements did not attack or criticize the integrity or impartiality of the judiciary and that her questioning and criticism of the incumbent's performance was permissible as an exercise of her First Amendment rights. On October 18, 2000, the Hearing Panel found Petitioner guilty on nine of the twelve charges and recommended that she be publicly reprimanded and fined $50,000 for conduct growing out of her election campaign. *See* Petitioner's Appendix B at App. 47.

Thereafter, on October 30, 2000, the Florida Supreme Court issued its Order to Show Cause for Petitioner to demonstrate why the JQC's findings and recommendations of discipline should not be accepted by the court. During the pendency of Petitioner's case before the Florida Supreme Court, this Court issued its decision in *Republican Party of Minnesota v. White,* 536 U.S. 765 (2002). In

White, this Court held that "[t]he Minnesota Supreme Court's canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment." *Id.* at 788.

The JQC filed a Motion for Leave to File Supplemental Briefs on whether *White* affected any specific canons of the Florida Code of Judicial Conduct and the extent, if any, to which *White* may impact the Hearing Panel's Findings in Petitioner's case. The Florida Supreme Court granted the JQC's Motion for Leave to File Supplemental Briefs and directed the parties "to file briefs addressing the impact, if any," of *White*.

On January 30, 2003, the Florida Supreme Court issued its opinion. In sum, the court held that the salient canons of the Florida Code of Judicial Conduct were not implicated by *White* and that clear and convincing evidence supported the JQC's findings that Petitioner violated Canon 7 of the Florida Code of Judicial Conduct as alleged in Charges 1, 2, 3, 4, 5, 7, 9 and 12 of the Formal Charges. *Inquiry Concerning A Judge (Kinsey)*, 842 So. 2d 77, 92 (Fla. 2003).[1] Petitioner then filed a Motion for Rehearing, which the Florida Supreme Court denied on

[1] Petitioner mistakenly asserts that Charge No. 10 alleged she made a knowing misrepresentation regarding the procedural status of a criminal case involving a defendant named Stephen Johnson. *See* Petition at 19. The correct number of the charge Petitioner references is Charge No. 9. The Florida Supreme Court actually found Petitioner not guilty of violating the canons cited in Charge No. 10. *Kinsey,* 842 So. 2d at 91.

March 26, 2003. Thereafter, on June 23, 2003, Petitioner timely filed the instant Petition for Writ of Certiorari.

In her Petition before this Court, Judge Kinsey has woven into her argument several factual matters that are outside the record. For instance, she states that "[t]he Florida Bar has officially opposed election of trial judges" and then goes on to discuss how a ballot initiative aimed at changing the method of selecting trial judges in Florida was defeated. *See* Petition at 7. As part of the same argument, Petitioner also references personal comments attributed to the chairman of the Florida Judicial Ethics Advisory Committee concerning this Court's decision in *White*. *Id.* at 8, n.9.

Aside from their irrelevance to this proceeding, none of these facts are part of the record and, as such, should not be considered by this Court in determining whether certiorari should be granted. *See, e.g., Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 488 n.3 (1986) (refusing to consider argument raised by party where it "was not presented to the state courts, and appear[ed] to rest in large part on facts not part of the record before [the Court].")

SUMMARY OF ARGUMENT

The decision of the Florida Supreme Court rests firmly upon two equally distinct, but compelling grounds, neither of which warrants the exercise of this Court's discretionary jurisdiction. First, distinguishing this Court's decision in *White* on factual and legal grounds, the Florida Supreme Court held that Petitioner engaged in a pattern of campaign speech in which she implicitly and

explicitly pledged or promised that, if elected, she would assist law enforcement and victims of crime. It is noteworthy that even the two Florida Supreme Court justices who dissented from the majority's application of *White* did not quarrel with the basic proposition that Florida's "pledges or promises" canon survived *White* intact. Rather, they had a factual disagreement with the majority's application of *White* to the facts in Petitioner's case. *Cf.* Supreme Court Rule 10 ("A petition for a writ of certiorari is ***rarely granted*** when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

Second, and significantly, the entire Florida Supreme Court (including the two aforementioned dissenting justices) agreed there was "clear and convincing" evidence that Petitioner made deliberately false statements regarding the incumbent in her campaign literature.[2] While acknowledging in her supplemental brief filed in the Florida Supreme Court that "[n]o one disagrees with prohibiting knowing intentional misrepresentations," *see* Judge Kinsey's Supplemental Answer Brief at 22, Petitioner stops short of admitting that her false speech falls outside the ambit of the First Amendment. Rather, she argues that the Florida Supreme Court interpreted the language in her campaign brochures too narrowly or, alternatively, that any errors in the brochures should be considered "minor error[s] in syntax." *See* Petition at 19.

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[2] Although the Florida Supreme Court accords the JQC's findings and recommendations great weight, the ultimate determinations of guilt and discipline rest with the court. The JQC's findings must be supported by "clear and convincing" evidence. *Kinsey*, 842 So. 2d at 85.

Stripped of its embellishment, it is clear that this argument is nothing more than Petitioner's effort to relitigate her disagreement with the factual conclusions reached by the Florida Supreme Court (under the guise of a constitutional challenge). Recognizing that knowingly false campaign speech is not protected, she can only argue that the Florida Supreme Court should have reached a different result applying the same law. As expressly provided in this Court's rules of procedure, such alleged error does not constitute grounds for granting certiorari relief.

ARGUMENT

Introduction

Contrary to Petitioner's argument, this case is not a referendum on the Florida Supreme Court's alleged attempt to circumvent the First Amendment and restrict judicial candidates' ability to meaningfully inform voters of their positions on legal issues. Most, if not all, of Petitioner's argument is devoted to attacking a strawman she has manufactured for the sole purpose of predicting that the Florida Supreme Court's opinion, if allowed to stand, will impede judicial candidates from informing the electorate of their "judicial philosophies, positions on disputed legal issues and criticism of opponents' qualifications and job performance." *See* Petition at 9. Albeit cleverly packaged as a theme by which to pique this Court's attention, Petitioner's argument completely misses the mark.

The Florida Supreme Court did not misapprehend this Court's holding in *White*. In fact, the court reiterated in its decision that under Florida's canons, a judicial candidate

"may state his or her personal views, even on disputed issues." *Kinsey*, 842 So. 2d at 87. What the Florida Supreme Court did hold, however – and what Petitioner refuses to acknowledge – is that her campaign rhetoric went far beyond generalized statements of her philosophical beliefs, but was instead pledges or promises of conduct that, if elected, she would be partial and biased in favor of a particular party or group of citizens. The Florida Supreme Court also found that Petitioner violated Canon 7's proscription against knowing misrepresentations. *Id.* at 90. Neither provision – the "pledges or promises" clause or the knowing misrepresentation ban – were at issue in *White*, a case involving Minnesota's "Announce Clause." Thus, the Florida Supreme Court properly rejected Petitioner's constitutional challenges.

I. PETITIONER FAILS TO DEMONSTRATE THAT THE MATERIAL PORTIONS OF FLORIDA'S CANON 7 ARE IMPLICATED BY THE WHITE DECISION

A. Judicial Canons Proscribing Candidates' "Pledges Or Promises" Are Entitled To Less Constitutional Protection Under *White*

In *White*, this Court invalidated a single canon of the Minnesota Code of Judicial Conduct, the so-called "Announce Clause." Notably, this Court did not purport to invalidate, or otherwise call into question, any other provision of the Minnesota Code of Judicial Conduct. For example, despite a strong intimation by Justice Ginsburg in her dissenting opinion that Minnesota's "pledges or promises" clause was necessarily intertwined with the Announce Clause, this Court emphatically held that its

opinion expressed no view on the "pledges or promises" clause. *See White*, 536 U.S. at 770.[3]

Although this Court's opinion in *White* is clear that it has no bearing on Minnesota's "pledges or promises" clause, examination of the factual context out of which *White* arose is helpful in order to distinguish between those campaign statements which are now constitutionally protected as "announcements" versus those statements which merit less protection because they qualify as "pledges or promises." *White* emanated from a challenge brought by Gregory Wersal, a candidate for the Minnesota Supreme Court, who claimed that Minnesota's "Announce Clause" violated the First Amendment. *Id.* at 769-70. Among other things, Wersal alleged that "he was forced to refrain from announcing his views on disputed issues during [his] campaign, to the point where he declined response to questions put to him by the press and public, out of concern that he might run afoul of the announce clause."[4] *Id.* at 770. After both the District Court, and the Eighth Circuit on appeal, held that the "Announce Clause" did not violate the First Amendment,[5] this Court granted certiorari. *Id.*

---

[3] As Justice Ginsburg noted in her dissent, "All parties to [*White*] agree that, whatever the validity of the Announce Clause, the State may constitutionally prohibit judicial candidates from pledging or promising certain results." *Id.* at 813 (Ginsburg, J., dissenting).

[4] In a previous campaign for the same office, Wersal distributed campaign literature in which he was critical of several decisions of the Minnesota Supreme Court on issues such as crime, welfare, and abortion. *Id.* at 768.

[5] *Republican Party of Minnesota v. Kelly*, 63 F. Supp. 2d 967 (D. Minn. 1999), *aff'd*, 247 F.3d 854 (8th Cir. 2001).

Before considering its constitutionality, this Court was careful to define the parameters of the "Announce Clause," noting that:

> Its text says that a candidate for judicial office shall not "announce his or her views on disputed legal or political issues." Minn. Code of Judicial Conduct, Canon 5(A)(3)(d)(i) (2002).
>
> ***We know that "announcing . . . views" on an issue covers much more than promising to decide an issue a particular way.*** The prohibition extends to the candidate's mere statement of his current position, even if he does not bind himself to maintain that position after election. ***All the parties agree this is the case, because the Minnesota Code contains a so-called "pledges or promises" clause, which separately prohibits judicial candidates from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," . . . – a prohibition that is not challenged here and on which we express no view.***

Id. at 770 (emphasis added). Accordingly, the Court left intact the "pledges or promises" clause of Minnesota's Code of Judicial Conduct.

Underlying this Court's condemnation of Minnesota's "Announce Clause" was the Court's fundamental belief that the Announce Clause was not narrowly tailored to serve the compelling state interests of preserving the impartiality and appearance of impartiality of the state judiciary. *Id.* at 771-77. While acknowledging that the word "impartiality" might have different connotations in a judicial context, the Court noted that its "root meaning" is:

> the lack of bias for or against either ***party*** to [a] proceeding. Impartiality in this sense assures equal application of the law. That is, it guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party.

Id. at 775-76 (emphasis added). Thus, it was the spectre of demonstrated bias for or against either ***party*** to a proceeding, as opposed to generalized campaign statements on ***issues*** that may come before the court, that was the linchpin of this Court's constitutional analysis.

B. The Florida Supreme Court's Rejection Of Petitioner's Justification For Her "Pledges Or Promises" Is Entirely Consistent With *White*

As noted by the Florida Supreme Court, "[i]n contrast to *White*, Florida does not have an 'announce clause' but [has] instead adopted a more narrow canon, which provides as follows:

> A candidate for judicial office . . . shall not
>
> (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or]
>
> (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court."

Kinsey, 842 So. 2d at 86-87 (quoting Fla. Code Jud. Conduct, Canon 7A(3)(d)(i)-(ii)).

Relying upon *White,* Petitioner summarily claims that Canon 7A(3) is an unconstitutional restriction of a judicial candidate's speech. Petitioner provides scant analysis of how *White* possibly implicates an entirely different canon from the Minnesota canon which this Court scrutinized in *White*; indeed, Petitioner even recognizes that the above-quoted language in Florida's canon 7 is very different from that at issue in *White*. *See* Petition at 12. Contrary to Petitioner's argument, the Florida Supreme Court both understood, and followed, this Court's reasoning in *White*. Clearly understanding the dichotomy between generalized philosophical statements which command the highest level of constitutional protection versus pledges or promises of conduct in office for or against a party, the Florida Supreme Court noted:

> While our judicial code does not prohibit a candidate from discussing his or her philosophical beliefs, ***in the campaign literature at issue Judge Kinsey pledged her support and promised favorable treatment for certain parties and witnesses who would be appearing before her (i.e., police and victims of crime)***. Criminal defendants and criminal defense lawyers could have a genuine concern that they [would] not . . . [receive] a fair and impartial tribunal. We do not find that these types of pledges and statements by a judicial candidate are protected by the First Amendment.

Kinsey, 842 So. 2d at 88-89 (emphasis added). The Florida Supreme Court further noted that "Judge Kinsey was running on a platform which stressed her allegiance to police officers." *Id.* at 88.

By way of example, in Charge No. 1 in which Petitioner was found guilty of violating Canons 7A(3)(d)(i)-(ii), the JQC alleged as follows:

> 1. During the campaign, . . . you distributed a piece of campaign literature entitled, "*Pat Kinsey: The Unanimous Choice of Law Enforcement For County Judge*" in which you stated that "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars," as opposed to simply pledging or promising the faithful and impartial performance of your duties in office.

As indicated, this charge was based on a brochure disseminated by Petitioner entitled, "Pat Kinsey: The Unanimous Choice of Law Enforcement for County Judge."[6] Among other things, the brochure contains a group photo of Petitioner with ten members of a heavily armed police SWAT team holding automatic weapons and wearing flak jackets. Above the picture is the legend,

Who do these guys count on to back them up?

The brochure goes on to describe Petitioner as the unanimous choice of law enforcement in two additional places inside the brochure, followed by the statement:

> Law enforcement officers willingly risk their lives every day to protect you. They face the prospect of great bodily harm, even death, in apprehending violent criminals. . . . After facing these threats, ***your police officers expect***

[6] *See* JQC Appendix A at A1-A3.

> ***judges*** to take their testimony seriously and ***to help law enforcement*** by putting criminals where they belong . . . behind bars!

(emphasis added).

In finding that this brochure constituted "clear and convincing evidence that Judge Kinsey intended to convey to voters that, if elected, she would be partial to law enforcement," the Hearing Panel opined as follows:

> Through this brochure, Judge Kinsey was telling the public that she would be very tough on crime ***and that she favored the police***. . . . [T]his brochure intentionally created and conveyed the message that Judge Kinsey would support the police if elected to the position of County Judge. . . .
>
> . . . ***Candidate Kinsey committed herself to a pro-police position on matters which she affirmatively stated would come before her on a daily basis as a judge***. The Hearing Panel finds this brochure to be clear and convincing evidence that Judge Kinsey intended to convey her pro-police position to the voters.

See Petitioner's Appendix B at App. 65-66 (emphasis added).

In Charge No. 2, which arose out of a second brochure that likewise highlighted Petitioner's support of law enforcement, the JQC alleged as follows:

> 2. During the campaign, . . . you reiterated ***your commitment to the prosecution side of criminal cases*** by distributing a piece of campaign literature entitled, "*If You Are a Criminal, You Probably Won't Want to Read This*," in which

> you stated that "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars!," as opposed to simply pledging or promising the faithful and impartial performance of your duties in office.

(emphasis added).[7] Leveling the same criticism at this brochure as it did with respect to the brochure that was the subject of Charge No. 1, the Hearing Panel again made special mention of the fact that Petitioner deliberately emphasized that, as a judge, she would be predisposed to favor law enforcement:

> The brochure is entitled *"If You Are a Criminal You Probably Won't Want to Read This!"* Candidate Kinsey was described as a "passionate advocate for victims" who "identifies with the victims of crime." The brochure notes that Kinsey had been "unanimously endorsed" by "area law enforcement officers" and that she had the endorsement of the Florida Police Benevolent Association and the Fraternal Order of Police. Such endorsements may certainly be brought to the attention of voters but this brochure went further and actually stated that police officers risk their lives every day and thus ***"police officers expect judges*** to take their testimony seriously and ***to help law enforcement*** by putting criminals . . . behind bars." ***Again the message was clear, Judge Kinsey touted herself as pro-police and committed to "help law enforcement."***

[7] See JQC Appendix B at A4-A6.

See Petitioner's Appendix B at App. 66-67 (emphasis added).

In affirming the Hearing Panel's findings that Petitioner's campaign literature was purposefully designed to inform voters she would act in a partisan manner towards law enforcement, the Florida Supreme Court opined:

> Through these statements, Judge Kinsey fostered the distinct impression that she harbored a prosecutor's bias and police officers could expect more favorable treatment from her as she promised to support police officers and help them put criminals behind bars. She also made pledges to victims of crime, promising to bend over backward for them and stressing the point that she identified with them "above all else," thus giving the appearance that she was already committed to according them more favorable treatment than other parties appearing before her. ***By disseminating materials which promised a different treatment based on the identity of the person appearing before her, it is beyond question that these promises affect her appearance of impartiality and fitness as a judge.***

Kinsey, 842 So. 2d at 88-89 (emphasis added).

Applying *White's* principles to the conduct in this case which the Florida Supreme Court concluded violated Florida's "pledges or promises" prohibition (Charge Nos. 1, 2, 3, and 5) demonstrates the fallacy in Petitioner's constitutional arguments. Here, both the Hearing Panel and the Florida Supreme Court expressly found that Petitioner's campaign statements were tantamount to "implicit pledges that if elected to office, [she] would help law enforcement." *Kinsey*, 842 So. 2d at 88. As such, her

statements are not protected by *White*. Other courts that have considered similar campaign rhetoric post-*White* have reached the same conclusion.

For instance, in *In the Matter of Watson*, 2003 WL 21321435 (Ct. App. N.Y. June 10, 2003), the New York Court of Appeals considered whether a judicial candidate's campaign statements were protected by *White* where, reminiscent of Petitioner, he made comments such as, "We need a city court judge ***who will work together with our local police department*** to help return [the community] to the city it once was. . . ." *Id.* at 2 (emphasis added). In rejecting the petitioner's argument that his comments were constitutionally-protected campaign speech, the New York Court of Appeals reasoned as follows:

> Needless to say, statements that merely express a viewpoint do not amount to promises of future conduct. On the other hand, ***candidates need not preface campaign statements with the phrase "I promise" before their remarks may reasonably be interpreted by the public as a pledge to act or rule in a certain way.*** A candidate's statements must be reviewed in their totality and in the context of the campaign as a whole to determine whether the candidate has unequivocally articulated a pledge or promise of future conduct or decisionmaking that compromises the faithful and impartial performance of judicial duties.
>
> ***We find that petitioner's comments in this case, when viewed in light of his comprehensive campaign theme, violate the pledges or promises prohibition. . . . Petitioner explicitly and repeatedly indicated that he intended to "work with" and "assist"***

> ***police and other law enforcement personnel if elected to judicial office***. These statements were not related to administrative concerns . . . but were directly associated with helping the police carry out their law enforcement functions.

Id. at 3 (emphasis added). Such statements, the court noted, are also "antithetical to the judicial role because ***judges do not 'assist' other branches of government – they are charged to apply the law impartially to everyone appearing in court***." *Id.* (emphasis added). Adopting the same rationale here, Petitioner's comments were equally violative of Florida's "pledges or promises" prohibition and outside the ambit of *White*.[8]

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[8] Petitioner also argues that the Florida Supreme Court erred by finding her guilty of violating Canon 7A(3)(a) based on comments she made during a radio broadcast that it is a judge's responsibility to be "absolutely a reflection of what the community wants." *See* Petition at 12-16; *see also Kinsey*, 842 So. 2d at 89. Canon 7A(3)(a) provides, in relevant part, that a candidate "shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary. . . ."

Petitioner first argues that a transcript of the radio broadcast admitted into evidence before the Hearing Panel (and relied upon by the Florida Supreme Court) is incomplete. *See* Petition at 14. This argument is essentially an attack on the "sufficiency of the evidence" underlying the Florida Supreme Court's judgment and provides no independent basis for certiorari review in this Court. Petitioner next argues that her comments were taken out of context and, when viewed, *in toto*, are simply a reflection of her personal philosophical belief that judges, as elected officials, have a responsibility to "reflect community values during the sentencing process." *See* Petition at 16. Disagreeing with Petitioner's explanation of her comments, the Florida Supreme Court reasoned that "[a] judicial officer must fulfill his or her obligation to uphold the constitutional and statutory rights of the litigants before the Court, notwithstanding that such decision may be unpopular with the community." *Kinsey*, 842 So. 2d at 89. Petitioner has failed to

(Continued on following page)

C. The Florida Supreme Court Properly Found That Petitioner's Intentional Misrepresentations Are Not Constitutionally Protected

The Florida Supreme Court's determination that Petitioner made knowingly false representations regarding the incumbent (as alleged in Charges 7 and 9) is also not implicated by this Court's decision in *White*. Notably, the Florida Supreme Court did not state, or otherwise intimate, that *White* provided any type of immunity for Petitioner's knowingly false statements. This is not surprising in light of well-established precedent in this Court that knowingly false or misleading statements regarding an opponent, albeit possibly political speech, are not protected by the First Amendment. *Brown v. Hartlage*, 456 U.S. 46, 60 (1982); *see also Pierce v. Capital Cities Communications, Inc.*, 576 F.2d 495, 506 (3d Cir.), *cert. denied*, 439 U.S. 861 (1978) ("[A] calculated lie about a public official, or a statement uttered out of reckless inattention to its falsity, is beyond the pale of constitutional protection.").

Charges 7 and 9 are predicated on Canon 7A(3)(d)(iii) of the Florida Code of Judicial Conduct, which provides that:

> A candidate for judicial office . . . shall not
>
> (i) ***knowingly*** misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

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demonstrate how the Florida Supreme Court's rationale is inconsistent with any aspect of this Court's decision in *White*.

See Fla. Code Jud. Conduct, Canon 7A(3)(d)(iii) (emphasis added). As elaborated upon below, Petitioner, recognizing that *White* does not invalidate Florida's canon 7A(3)(d)(iii), instead attempts to undercut the Florida Supreme Court's factual findings by couching her argument as a constitutional challenge.[9]

By way of background, in Charge No. 7, the JQC alleged as follows:

> 7. During the campaign, . . . you knowingly misrepresented in your campaign brochure entitled, "*A Shocking Story of Judicial Abuse*," that your opponent, the incumbent, had not revoked Grover Heller's bond at an emergency bond hearing when, in fact, he had revoked the defendant's bond. You further implied that your opponent's role in that case was to protect "an elderly law-abiding couple" and that the incumbent's conduct represented a "shocking lack of compassion for the victims of violent crime."

As indicated, this charge was based on a brochure disseminated by Petitioner's campaign entitled, "*A Shocking Story of Judicial Abuse.*"[10] The brochure criticized the incumbent's handling of the criminal case of a defendant named Grover Heller. On the inside of the brochure the following words appear:

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[9] *See* Petition at 16 ("Although less directly impacted by *White*, the allegations of intentional misrepresentation in Charges 7 and 9 are protected speech as Canon 7A(3)(d)(iii) was applied to the facts of this case.").

[10] *See* JQC Appendix C at A7-A9.

WHAT KIND OF MAN WOULD BEAT UP HIS OWN MOTHER?

A photograph of Mr. Heller is then shown next to a summary of the facts in his case, including the fact that Judge Green had granted his pre-trial release. In the summary, Petitioner refers to Mr. Heller as a "thug" and then describes how Mr. Heller's parents, who were allegedly afraid of him, "returned to Judge William Green, in a panic seeking to have their son returned to jail for their protection." The following language is then prominently displayed in large white letters against a red background:

WHAT DID JUDGE WILLIAM GREEN DO?

As the reader opens the brochure, the question previously raised is answered as follows:

> **Judge William Green offered to jail the elderly couple instead!**
>
> That's right. **Instead of revoking Grover Heller's bond** and putting this abusive punk in jail, Judge William Green offered to put his elderly parents in jail! Incredible.

The Hearing Panel found, by clear and convincing evidence, and the Florida Supreme Court agreed, that Petitioner made a knowingly false misrepresentation concerning Judge Green's actions because the brochure gave voters the misleading impression that Judge Green did not revoke Mr. Heller's bond when Petitioner knew, in fact that Judge Green did revoke the bond. *See Kinsey*, 842 So. 2d at 89-90.

Curiously, *nowhere* in her Petition does Petitioner contest the Hearing Panel's finding that she was aware Judge Green had revoked Mr. Heller's bond. In fact, she

admitted at trial that before disseminating the Heller brochure, she had researched and was aware of the facts in Mr. Heller's case. (T:1-119.).[11] Rather, she argues that "voters have a legitimate interest in how judges treat litigants, witnesses, court personnel and attorneys who appear in court." *See* Petition at 17. Citing *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002), she also asserts that even if the language in the brochure was a misrepresentation, it was at best an honest mistake. Both arguments are without merit.

First, assuming arguendo that voters have a "legitimate interest in how judges treat litigants, witnesses, court personnel and attorneys," such an interest does not obviate Petitioner's obligation to refrain from statements she *knows* are false. Second, Petitioner's reliance upon *Weaver* for the proposition that her innocent misrepresentation should be excused is contrary to the factual findings of both the Hearing Panel and the Florida Supreme Court.[12] Moreover, Florida's canon prohibiting

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[11] This is a reference to Volume 1, Page 119 of the official transcript of proceedings before the Hearing Panel on June 12-13, 2000. Because of its voluminous nature, the transcript of proceedings has not been filed in this Court.

[12] Arguably, Petitioner is simply seeking rehearing of the Florida Supreme Court's factual determination that she made a knowing (as opposed to negligent) misrepresentation regarding Judge Green's handling of the Grover Heller matter. In this regard, she is not advancing a constitutional basis for this Court to exercise its discretionary jurisdiction. It is noteworthy that although two of the Florida Supreme Court's seven justices did not join in the PER CURIAM acceptance of the Hearing Panel's findings vis-a-vis the "pledges or promises" clause, all seven justices voted to accept the Hearing Panel's findings that Petitioner committed intentional misrepresentations as alleged in Charges 7 and 9.

misrepresentations is more narrowly tailored than the one at issue in *Weaver*.

In *Weaver*, the Eleventh Circuit invalidated an idiosyncratic canon of the Georgia Code of Judicial Conduct that prohibited candidates for judicial office from, *inter alia*, using or participating in any form of public communication that the candidate knew or reasonably should have known was false, fraudulent, misleading or deceptive. *Weaver*, 309 F.3d at 1315. In finding that Georgia's canon was not narrowly tailored to serve the compelling state interest of prohibiting deliberately false speech, the Eleventh Circuit reasoned that:

> Canon 7(B)(1)(d) not only prohibits false statements knowingly or recklessly made, it also prohibits false statements negligently made and true statements that are misleading or deceptive or contain a material misrepresentation or omit a material fact or create an unjustified expectation about results.

Id. at 1320. Thus, the court concluded that the canon did not provide the requisite "breathing space" to prevent a chilling effect on protected speech. *Id.* at 1319-20.

In contrast to the Georgia canon under scrutiny in *Weaver*, Florida's canon 7A(3)(d)(iii) under which Petitioner was found guilty, provides that a candidate for judicial office shall not "***knowingly*** misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent." *See* Fla. Code Jud. Conduct, Canon 7A(3)(d)(iii) (emphasis added). Thus, unlike the Georgia canon in *Weaver*, Florida's canon is narrowly tailored because it prohibits only deliberately false statements.

In Charge No. 9, the other charge of which Petitioner was found guilty for having made a knowingly false statement, the JQC alleged as follows:

> 9. During the campaign, . . . in your campaign brochure entitled, "*A Vital Message From Law Enforcement,*" you knowingly misrepresented the nature and seriousness of criminal charges which were pending in *State v. Johnson*, Case No. 97-4032, by giving the false and misleading impression that the defendant had been charged with attempted murder and burglary at the time of his appearance for bond consideration when, in fact, no such charges were pending at the time. Your campaign literature also stated that in a restraining order in the case, the defendant is quoted as having told the victim, that he would kill her "just like I buried that bitch in Mississippi," when, in fact, there is no such language in the restraining order.[13]

The Hearing Panel found Petitioner guilty of a misrepresentation only as to her false description of the charges that were pending against the defendant when he was arrested, "because the brochure left the clear impression that Johnson had been charged with attempted murder and burglary and no such charges were in fact pending at the time that he appeared at his bond hearing." *See* Petitioner's Appendix B at App. 72.

In affirming the Hearing Panel's finding that Petitioner made a knowingly false representation regarding

---

[13] *See* Appendix D at A10-A13.

Judge Green's handling of the Johnson matter, the Florida Supreme Court reasoned as follows:

> The pamphlet leaves the clear impression that Johnson had been charged with attempted murder and burglary at the time he appeared at his bond hearing. Contrary to the implication, Johnson was not charged with these crimes until after Judge Green ordered his bond set at $10,000. Judge Kinsey asserts that the flyer does not contain an intentional misrepresentation because the facts of the case would have supported a charge of attempted murder and burglary. We reject this argument as meritless. As Judge Kinsey had already described the facts of the case in detail, she had only one purpose for putting the later charges in the brochure – to embellish her allegations that Judge Green made various decisions of a questionable nature while on the bench. There is sufficient evidence to support the JQC's findings that Judge Kinsey made intentional misrepresentations in this flyer.

Kinsey, 842 So. 2d at 90.

Having somewhat retreated from her position before the Florida Supreme Court, Petitioner (again relying on *Weaver*), now admits that she made a mistake "when she reviewed the draft of the campaign brochure" but contends her mistake should be forgiven because she simply missed it "in the hectic pace of the campaign." *See* Petition at 21. Notably, in her Supplemental Answer Brief filed in the Florida Supreme Court on the effect of *White* on Canon 7A(3)(d)(iii), Petitioner admitted that "[n]o one disagrees with prohibiting knowing intentional misrepresentations." *See* Supplemental Answer Brief at 22. The Hearing Panel and Florida Supreme Court have previously considered

and soundly rejected Petitioner's invitation to excuse her misrepresentations as "harmless error." Because canon 7A(3)(d)(iii) applies only to intentional misrepresentations and the Florida Supreme Court unanimously found that Petitioner violated that canon, Petitioner's eleventh-hour characterization of her speech as a negligent mistake is not sufficient ground for invoking this Court's certiorari jurisdiction.

CONCLUSION

Petitioner's specie of campaigning, which explicitly and implicitly made pledges or promises of performance in office, is not the type of campaign speech protected by this Court's decision in *White*. *White* immunizes from disciplinary regulation judicial campaigning that speaks to general legal or political issues, as opposed to Petitioner's campaigning at issue here, which was calculated to align her candidacy with a particular party in matters she knew would come before her, if elected. Additionally, *White* does not impact the findings as to Charges 7 and 9, which relate to knowingly false or misleading campaign statements.

In sum, Florida's Canon 7A(3) does not conflict with *White*, nor does it unconstitutionally restrict campaign speech. This is so because the First Amendment does not protect knowing misrepresentations in campaign speech; and because the "pledges or promises" proviso of the Florida canon is not abrogated by *White*. The Florida Supreme Court could constitutionally hold that it was inappropriate for a judicial candidate to campaign on the basis of promising or pledging assistance to one class of

parties who would come before her if she were elected. The decision below does not conflict with *White* and certiorari should be denied.

Respectfully submitted,

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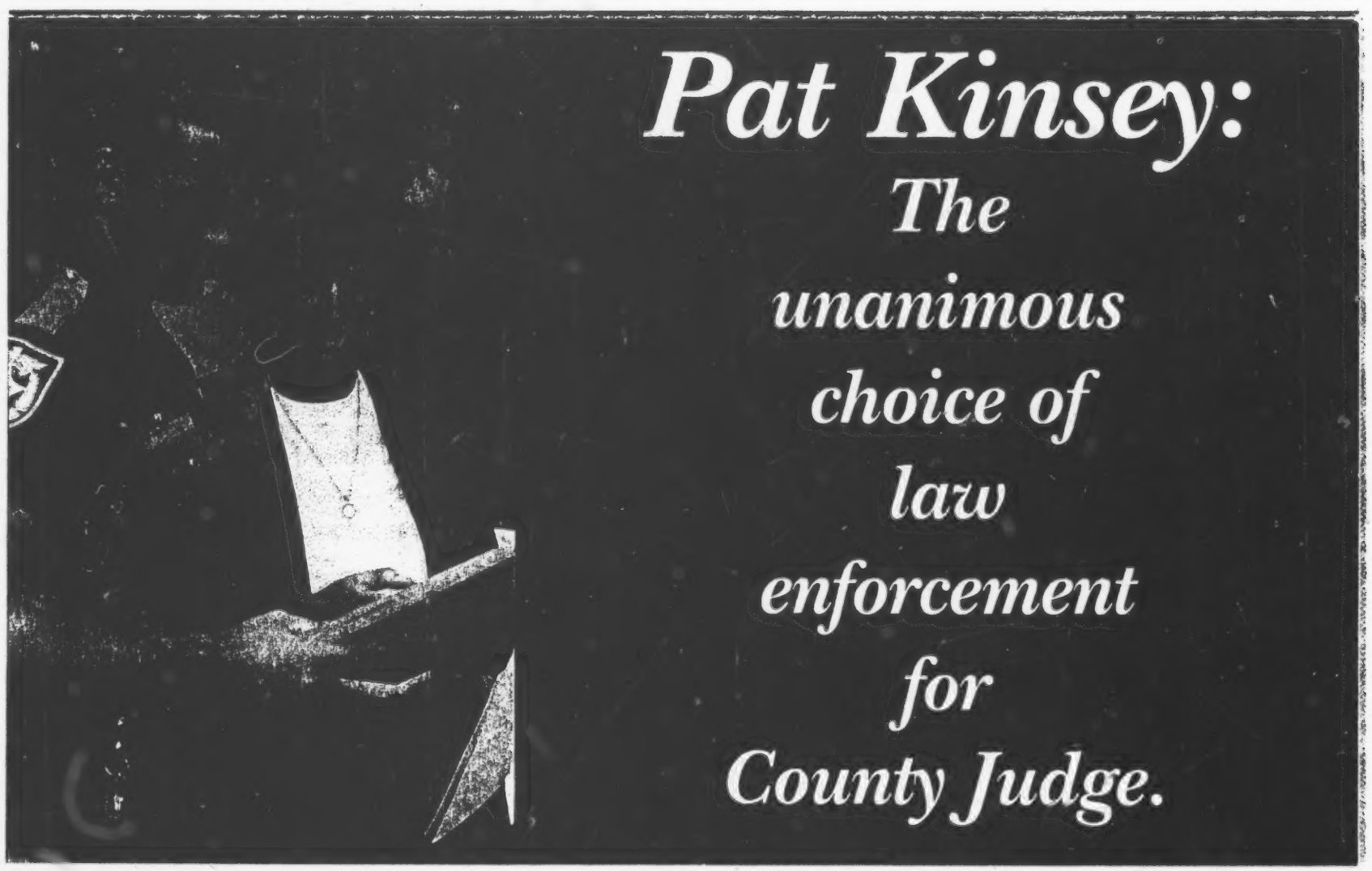

Pat Kinsey: The unanimous choice of law enforcement for County Judge.

Pat Kinsey: She's Fair

Police officers are people too. They have families, hopes and dreams. They know, first hand, that people get in trouble for a variety of reasons and under many circumstances. The police support Pat Kinsey because she is fair and understanding when someone has a problem yet unyielding when she feels criminals are trying to take advantage of the system.

Law enforcement supports Pat Kinsey because they know she will be fair and just in the treatment of ordinary citizens and tough as nails on criminals who abuse the system.

Pat Kinsey: She's Compassionate

Cops see the worst, and best, in society. They routinely encounter families in trouble and victims whose lives are destroyed by violent criminals roaming our streets. The law enforcement officers of our community are supporting Pat Kinsey because she is compassionate for those less fortunate and is sensitive to families in trouble.

Pat Kinsey understands the needs of victims and their families and will be a compassionate judge for the truly deserving.

You can make a difference by voting Tuesday, September 1st!

Your Law Enforcement Officers Unanimously Support Pat Kinsey for County Judge.

Please Vote on Tuesday, September 1st!

Pat Kinsey: She's Tough

Law enforcement officers willingly risk their lives every day to protect you. They face the prospect of great bodily harm, even death, in apprehending violent criminals on our streets and in our neighborhoods. After facing these threats, your police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong ... behind bars!

Your area police officers have unanimously endorsed Pat Kinsey for County Judge because they know she is tough on violent criminals. As a prosecutor, Pat Kinsey took an unprecedented interest in police arrests, she visited crime scenes and demanded to know the facts.

When Pat Kinsey brings a case to trial, the criminals knew they were in for a rough ride.

PAT KINSEY FOR COUNTY JUDGE

Who do these guys count on to back them up?

"Pat" Kinsey
For County Judge

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If you are a criminal, you probably won't want to read this!

— DETAILS INSIDE —

Who will demand respect for our legal system?

Pat Kinsey...She's Tough

Law enforcement officers willingly risk their lives every day to protect you. They face the prospect of great bodily harm, even death, when apprehending violent criminals on our streets and in our neighborhoods. After facing these threats, your police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong...behind bars!

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When Pat Kinsey brought a case to trial, the criminals knew they were in for a rough ride.

Pat Kinsey...Tough, Fair, Compassionate

A Tough Prosecutor

Criminals know when Pat Kinsey is their prosecutor it's no laughing matter. Pat Kinsey has earned a reputation as a tough, aggressive prosecutor who leaves no stone unturned in the pursuit of justice.

Pat has amassed a solid record of convictions in crimes ranging from Murder to Sexual Battery, from Petty Theft to Domestic Violence. Pat pursues each and every case as if she, or her family, were the victim. This intensity has earned her the respect of the law enforcement community, the men and women serving on the front lines of the war on crime.

Pat Kinsey has been unanimously endorsed by our area law enforcement officers because they know she'll hold criminals accountable.

A Fair Person

Pat Kinsey did not grow up with a silver spoon in her mouth. Growing up in a military family, Pat Kinsey lived in many places and interacted with diverse people from many walks of life. Pat understands the problems families face and will use her life experiences to render fair and impartial judgments from the bench.

Pat Kinsey understands people. As our County Judge, she will render fair and impartial judgment based on her extensive life experiences.

Let's Elect Pat Kinsey for County Judge, Please Vote on Tuesday, Sept. 1st.

A Passionate Advocate for Victims

Above all else, Pat Kinsey identifies with the victims of crime. For too long, criminals have been allowed to avoid the consequences of their actions, and victims have been left to pick up the pieces. Pat Kinsey believes criminals should be required to pay the cost of their incarceration and restitution to their victims.

Pat Kinsey believes a judge should protect the victims of crime and listen to the needs and concerns of tax-paying, law-abiding citizens.

Pat Kinsey is Endorsed by:

Florida Police Benevolent Association

Representing over 32,000 Law Enforcement Officers in Florida

Fraternal Order of Police

Representing over 270,000 Police Officers Nationwide

Pd. Pol. Adv. Paid For and Approved by the Pat Kinsey for County Judge Campaign, Non-Partisan

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A7
APPENDIX C

Pd. Pol. Adv. Paid for and Approved by the Pat Kinsey Campaign (NP).

BEST AVAILABLE COPY

A shocking Story of Judicial Abuse

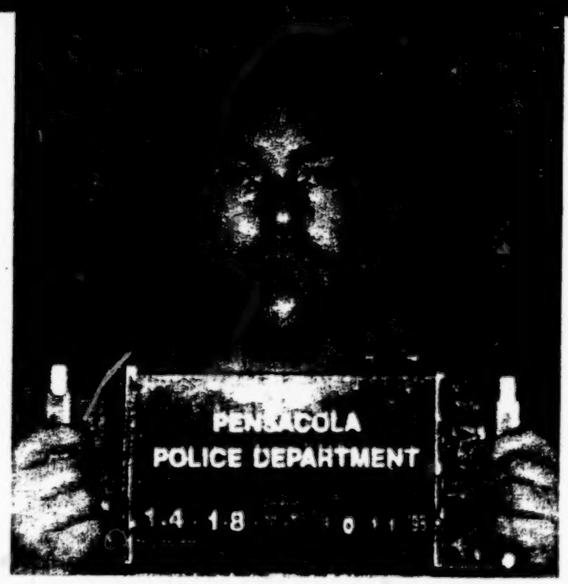
– Details Inside –

What kind of man would beat up his own mother?

Meet Grover Heller. He was arrested on October 11, 1995 for battery after he grabbed his 63-year-old mother, slammed her against a door and beat her with his fists . . . sending her to the hospital.

Incredibly, County Judge William Green released this thug the very next day.

Soon after his release, Heller began making threatening phone calls to his parents telling them "I got a bullet for you, and one for pops." The elderly couple returned to Judge William Green in a panic, seeking to have their son returned to jail for their protection.



A8

What Did Judge William Green Do?

– See Inside –

Judge William Green offered to jail the elderly couple instead!

WEATHER

Chance of rain 0%
High 78° Low 44°
18 days left in hurricane season

Monday
November 13, 1995

PENSACLE
News Journal

A Gannett Newspaper

FINAL EDITION

HOLIDAY SHOPPING AT PAWNSHOPS
Consumers find bargains in stores that used to be considered seedy. 1E

HANDLING GATE-CRASHERS
Tactful tips on what to do when an uninvited guest shows up on your doorstep 1B

INSIDE

© 1995 Pensacola (Fla.) News Journal, Inc.

Scared couple offered safe haven – in jail

By Ginny Graybiel
News Journal staff writer

LAW ENFORCEMENT

Jeanette and Chuck Strangway began getting the chilling telephone calls from her son hours after he bonded out of jail.

"He told me, 'I got two bullets, One for you. One for Pops,'" Mrs. Strangway said. Re-arrest seemed reasonable.

What they got was unreasonable. Green asked the Strangways if they wanted him to put them in the Escambia County Jail for their own protection until Heller's battery case was resolved.

The Strangways were thunderstruck. Green was treating them as criminals, offering to lock them up for safety until the hearing.

The son has since been re-arrested, but not because of the threats. His bond was revoked because his public defender could not find him.

The couple has said they will not appear again before Green, which means that in all likelihood prosecutors will have to drop the battery charge against the son. A man who may be guilty of domestic violence may walk away unfettered.

Darrow's words ring loud and clear.

Green may have been well intentioned, and he may well have been trying to determine the severity of the couple's concern. But the intention and result went askew.

The couple now fears the bench, and believes that victims, not criminals, may end up behind bars. Others who have heard of the case may share their fears. Which is opposite what is needed.

With domestic violence a significant and growing problem, the crime must be easier, not harder, to report.

Compassionate processes must be found to encourage people to seek solutions, not to chase them away for fear that they will be victimized by the courts as well.

Judges also need to consider the potential for violence and use cash bonds rather than signature bonds. That might prevent or at least delay a suspect's return to the street, possibly to seek revenge.

As Sue Hand, executive director of Favor House, a Pensacola shelter for abuse victims, says, "When we send a message that the only way we can protect a victim is to incarcerate them, then we're putting the shoe on the wrong foot."

The Strangways are bitter, frustrated and frightened.

Until the son's arrest, they bolted the doors to their home, drew the curtains and jumped at every unexplained bump and creak. Perhaps they will again if he is released.

As Darrow suggested, justice, in this case, went astray.

Attorney's Office prosecutors, who took them back to Green's courtroom Oct. 26 with a plea for help and a request the judge revoke Heller's bond.

What the Strangways, married 22 years, got was a shock.

Green asked the 63-year-old woman and her 67-year-old husband an extraordinary, prodding question.

Did the Strangways want him to put them in the Escambia County Jail for their own protection until Heller's battery case was resolved?

It was a question Green has posed to alleged victims of domestic violence only two or three times in his eight-year career, but it's one advocates for abused people say further intimidates and keeps victims from working within the court system to seek protection.

Green

Stunning question

"I thought, 'Am I hearing right?'" Jeanette Strangway said last week. "Did he ask if my husband and I wanted to be incarcerated? I mean, there's a man loose with a gun.

"I thought, 'Well, what should I say to a judge?' He scared me. They want to try to scare you, too.'"

Jeanette Strangway told Green she didn't want to be jailed.

"I can keep running if I have to," she told him.

Chuck Strangway, a Retired Champion International employee, was equally incredulous.

"It stunned me," he said. "I thought to myself, 'They got a motel over there at the jail, or what?'"

He told the judge: "No, I can protect myself at home, etc."

Green then backed off his suggestion.

See JUDGE, 10A

Son in family case free again

ccusations hearing

Judge suggests couple might be safer in jail

FROM 1A

tion, saying Heller had "at least technically" violated the terms of his release by calling the Strangways.

He revoked the bond, issued a warrant for Heller's arrest, and ordered another hearing within 24 hours of his being taken into custody.

Heller, not at the hearing because the Public Defender's Office was unable to locate him. As of Sunday, Heller had not been apprehended, and the Strangways didn't know his whereabouts.

Green, who regularly handles domestic-violence cases, told the Strangways that he thought the way he was frightened their interest in getting psychological help would be best addressed.

"I'm especially sensitive to the victim's fears," said Robin Hassler, executive director of the Governor's Task Force on Domestic Violence in Tallahassee.

She said she knew nothing about the Heller case specifically, but she said: "If we were to put victims on trial, ... justice on its head."

But she said: "If we were to put victims on trial, ... justice on its head."

Hassler said her greatest concern about the judge's suggestion that a judge could put victims in jail could prevent them from using the

"It essentially discourages victims from coming forward. For those victims, it's a very scary process. ... When we send a message that the only way we can protect a victim is to incarcerate them, then we're putting the shoe on the wrong foot."

She called Green's suggestion "that's the ... of the system," and "totally threatening to the victim."

Hassler also said she knew of the case of Jeanette Strangway, fear for their safety at the

Charles Strangway and his wife, Jeanette, fear for their safety at the hands of Jeanette's grown son.

Mother relieved that son is jailed again after threat

By Ginny Graybiel
News Journal staff writer

A man accused of threatening to kill his mother and stepfather while he was out on bond on a charge of beating the mother is back in jail.

Grover Heller, 37, was arrested Tuesday afternoon in Lynn Haven and taken to the Bay County Jail.

"Thank goodness," Heller's mother, Jeanette Strangway, said when she learned of his arrest. "Jail is where he needs to be."

The 63-year-old woman said she and her 67-year-old husband, Chuck, left their Northeast Pensacola home in fear Monday after receiving another threatening telephone call from her son. They spent the night in their motor home.

Heller's arrest came a day after a News Journal story detailing Escambia County Judge William Green's handling of Heller's case.

Green asked the Strangways during an Oct. 26 bond-revocation hearing if they wanted to be in jail for protection from their son.

The Strangways had told the judge that Heller telephoned them with the message: "I got two bullets. One for you. One for Pops."

The couple, who later said they were astounded and insulted by Green's question, said no. The judge then decided to revoke Heller's bond.

Green subsequently said he occasionally asks alleged victims of domestic violence if they want to go to jail to help him judge how serious a threat a defendant poses. He acknowledged that he cannot put victims in jail.

Green had released Heller from jail on Oct. 12, following his arrest the day before on a battery charge. His mother said he shoved her against a door and beat her.

Escambia County sheriff's officials did not know Monday night when Heller would be returned to the Escambia County Jail.

Heller was not present for the hearing in which his bond was revoked because his public defender could not locate him.

Green ordered that Heller be brought before him for further consideration of the bond issue within 24 hours of his return to the local jail.

Heller's trial is scheduled for Dec. 27 before Green.

That's right. Instead of revoking Grover Heller's bond and putting this abusive punk in jail, Judge William Green offered to put his elderly parents in jail! Incredible.

The couple left Judge Green's courtroom "visibly shaken" and were quoted by the *Pensacola News Journal* as saying "Am I hearing right? Did he (Judge Green) ask if my husband and I wanted to be incarcerated?"

When asked by reporters why he offered to jail the couple, ages 63 and 67 respectively, Judge Green said he was "testing them" to see if they were really as afraid of their abusive son as they said they were. Testing them?

Since when does an elderly, law-abiding couple need to be "tested" by a sitting County Judge who is supposed to protect them?

A shocking lack of compassion for the victims of violent crime!

You can do something about it. You can Vote **NO** on Judge William Green.

Vote NO on Judge William Green on Tuesday, September 1st.

EDITORIALS

Finger jabbed in justice's eye

"There is no such thing as justice—in or out of court."
—Clarence Darrow, 1936

Nearly 60 years after he uttered those words, the attorney who argued the Scopes "Monkey" trial would be no less correct given Jeanette and Clarence Strangway's encounter in an Escambia County courtroom.

The Strangways, who appeared before Escambia County Judge William Green to plead for protection from their son, no doubt expected the court to order Grover Heller's arrest. He had, after all, been arrested for battering his mother. And after being released on a signature bond, had begun a series of harassing telephone calls.

And he had told them, "I got two bullets, One for you. One for Pops," Mrs. Strangway said. Re-arrest seemed reasonable.

What they got was unreasonable. Green asked the Strangways if they wanted him to put them in the Escambia County Jail for their own protection until Heller's battery case was resolved.

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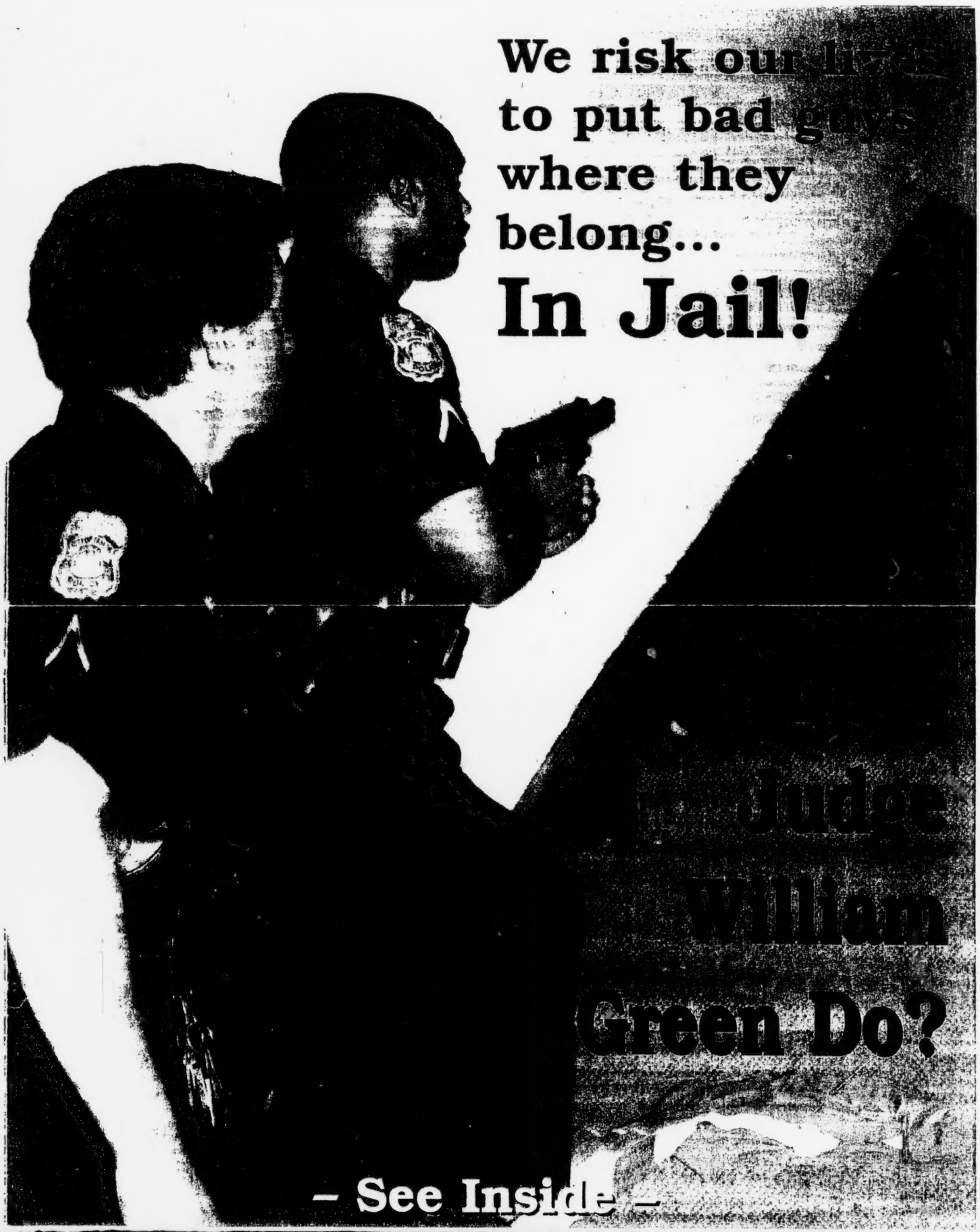
A Vital Message From Law Enforcement

– Details Inside –


We risk our lives
to put bad guys
where they
belong...
In Jail!
Judge
William
Green Do?
– See Inside –

Judge Green "Lets 'em Go" .

Take a look at some of the characters Judge "Let 'em Go" Green has released into our community.

Case #1: Meet **Stephen Durant Johnson**

Charged with: Attempted First Degree Murder, Burglary of a Dwelling with a Battery, Violation of a Restraining Order (Domestic Violence) and False Imprisonment (Kidnapping).

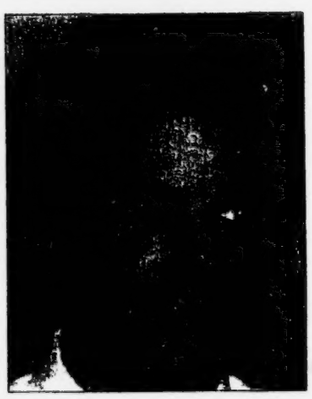
Facts of Case: Stephen Johnson pled no-contest to killing a woman in Mississippi and served ten years in state prison. After his release, Johnson returned to Pensacola and married. After years of suffering Mr. Johnson's domestic violence and cocaine addiction, his wife filed for divorce and obtained a restraining order. Mr. Johnson vowed to kill his wife "just like I buried that bitch in Mississippi."* True to his word, Mr. Johnson came to the victim's home in the middle of the night, cut the phone lines to the house, kicked the front door in and began strangling the victim to the point he was charged with attempted murder. He was arrested on a no-bond warrant.

What Judge Green Did: **Let 'em Go.** The next morning, Judge Green reduced Johnson's bond to $10,000 (requiring him to pay just $1,000), and he was released.

Current Status: Concerned for the safety of the victim, the prosecutor, Pat Kinsey, immediately appealed Judge Green's decision to Circuit Judge Joseph Tarbuck who ordered law enforcement to take Johnson back into custody without bond. Johnson remains in the Escambia County Jail without bond pending trial.

*Actual quote from restraining order

Case #2: Meet **Robert Allen Christenson**



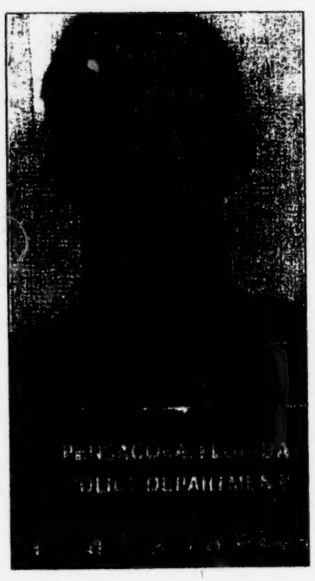
Charged with: Nine cases of indecent exposure.

Facts of Case: Robert Christenson confessed to victimizing more than 50 women in the Fox Run Subdivision as they returned to their homes by jumping out of the bushes, wearing a mask, naked from the waist down, and exposing himself while masturbating. He was tried on nine of the cases and convicted on eight.

What Judge Green Did: **Let 'em Go.** Judge Green could have sentenced Christenson to eight years in the County Jail and a fine up to $8,0000.00. Instead, he sentenced him to four years probation and a fine of $1,930.00. He was given credit for time served (28 days in jail and another 80 days in a work release program) and released.

. . A Cop's Worst Nightmare

Case #3: Meet **Gerard Alsdorf**



Charged with: Ten counts of sexual battery and ten counts of lewd and lascivious acts on a child under the age of 16.

Facts of Case: On July 22, 1998, Judge Nancy Gilliam, a circuit court judge, signed a no-bond warrant for Alsdorf's arrest for allegedly forcing an eight-year-old girl to perform a sex act on him and then continuing the sexual abuse for a ten-year period. The following morning, Judge Green asked Alsdorf how much money he had and what bond he thought he could afford.

What Judge Green Did: **Let 'em go.** Although a Circuit Judge had determined, after a review of the evidence, that Alsdorf should be held without bond, Judge William Green released him on a $50,000 bond (payment of just $5,000, an amount Alsdorf indicated he could afford) and released him into our community.

Current Status: Concerned for the safety of the victims, the prosecutor in this case immediately brought the matter before Circuit Judge Laura Melvin who revoked Alsdorf's bond. He is currently in the Escambia County Jail without bond pending trial.

A13

Judge "Let 'em Go" Green

Law enforcement officers risk their lives to bring violent criminals to justice. Prosecutors work hard to build cases and fight to keep dangerous felons in jail until trial. Victims have a right to expect judges to protect them by denying bond to potentially dangerous offenders.

Judge "Let 'em Go" Green has consistently ignored the pleas of police officers, prosecutors and victims to keep these potentially dangerous individuals off our streets.

*You **CAN** do something about it.*

*Vote **NO** on Judge William Green on Tuesday, September 1st.*